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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,501	10/09/2003	Peter B. Lindgren	6744-7-cip-2	9851
4897	7590	09/10/2004	EXAMINER	
ROBERT C. KAIN, JR. 750 SOUTHEAST THIRD AVENUE SUITE 100 FT LAUDERDALE, FL 333161153			ARK, DARREN W	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/682,501

Applicant(s)

LINDGREN, PETER B.

Examiner

Darren W. Ark

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 36-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/9/03, 2/2/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 37-46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/14/2004.

Claim Objections

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 36-46 been renumbered 35-45.

3. Claim 13 is objected to because of the following informalities:

Claim 13, line 1, "1" should be changed to "10".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 1-35, the term “(LEDs)” renders the claim vague and indefinite since the term could also represent “light emitting diodes”.

In regard to claim 1, line 5, the term “said two LEDs” lacks positive antecedent basis. Also see claim 10, lines 4 and 7 and claim 19, lines 6 and 8 and claim 26, line 4 for the same problem.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 4, 10, 11, 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Japanese Pat. No. 2002-199828 to Ichikawa et al.

Ichikawa et al. discloses a transparent housing (11) with at least one battery (31) and at least two LEDs (2r, 2g, 2b); a switch system (switch on part unit U; see

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translation paragraph no. 21) including a blinking circuit (33) to turn the LEDs ON and OFF; and fins (12).

8. Claims 10, 26, 30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kulak 4,437,256.

Kulak discloses a transparent housing (20 is see through) with at least one battery (12) and at least two LED's (at each end; see col. 1, lines 54-61) emitting a different color (see col. 1, lines 56-57); a switch system (10, 11, 13; not being particularly claimed); a corresponding light modifier for each LED including one or more light diffraction gratings (oil and metallic reflective particles; "diffraction" is defined as "Modification of the behavior of light or of other waves resulting from limitation of their lateral extent, as by an obstacle or aperture") and one or more light reflection surfaces (polished metal balls); fins (portions of 2 extend laterally; fins are not particularly claimed).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 3, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. No. 2002-199828 to Ichikawa et al. in view of Harkin 6,671,995.

Ichikawa et al. discloses that the LEDs can be red, green, and blue and that a total of 7 colors may be achieved (see translation paragraph no. 19) including white (when all LEDs are lit), but does not disclose a white LED. Harkin discloses a lighted fishing lure capable of using multiple LEDs of different characteristics which include single-color LEDs (for example red or green; see col. 1, line 41) and white LEDs (see col. 1, line 42 & col. 9, line 24). It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the white LED of Harkin in the lure of Ichikawa et al. in order to provide the frequency of light which is most appealing to the type of fish sought and which is most visible given the water conditions encountered.

11. Claim 5-9, 14-20, 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. No. 2002-199828 to Ichikawa et al. in view of Sinclair 6,331,062.

Ichikawa et al. does not particularly disclose at least two lithium batteries, three alkaline batteries, a power source supplying at least 3.4 volts or exceeding 150% of the recommended current. Sinclair discloses using 2 cells in series comprising (lithium cells which would result in greater than 3.3V and 150% current [max. continuous current for device is 25mA but it was found that device would continue to operate up to 250mA--- see col. 5, lines 55-end]) to power two LEDs (green or white) and that two cells is optimum since it reduces the effect of series resistance over 3 cells in series. It is also noted that lithium batteries are notoriously old and well known in the light art as providing a high capacity energy source (see cited prior art below in Conclusion section). It would have been obvious to a person of ordinary skill in the art to modify the

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lighted fishing lure of Ichikawa et al. by utilizing at least two lithium batteries which provide at least 3.4 volts or exceeding 150% of the recommended current in view of Sinclair in order to provide a high capacity energy source that will cause the LEDs to emit far more light than is conventional so that the light may be usefully employed for active illumination.

12. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. No. 2002-199828 to Ichikawa et al. in view of Sinclair 6,331,062 as applied to claim 19 above, and further in view of Harkin 6,671,995.

Ichikawa et al. discloses that the LEDs can be red, green, and blue and that a total of 7 colors may be achieved (see translation paragraph no. 19) including white (when all LEDs are lit), but does not disclose a white LED. Harkin discloses a lighted fishing lure capable of using multiple LEDs of different characteristics which include single-color LEDs (for example red or green; see col. 1, line 41) and white LEDs (see col. 1, line 42 & col. 9, line 24). It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the white LED of Harkin in the lure of Ichikawa et al. in order to provide the frequency of light which is most appealing to the type of fish sought and which is most visible given the water conditions encountered.

13. Claims 26, 27, 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. No. 2002-199828 to Ichikawa et al. in view of Yokogawa et al. 6,029,388.

Ichikawa et al. discloses a light modifier in the form of one or more light diffraction surfaces (13 with 13s, 13m), but does not disclose one or more light reflection

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surfaces. Yokogawa et al. discloses light modifiers comprising light diffraction (32) and reflecting (31) surfaces for an LED (25) and also fins (27). It would have been obvious to a person of ordinary skill in the art to employ the light reflection surface of Yokogawa et al. in the lure of Ichikawa et al. in order to provide means for directing light toward other directions to catch the attention of the fish.

14. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. No. 2002-199828 to Ichikawa et al. in view of Yokogawa et al. 6,029,388 as applied to claim 26 above, and further in view of Harkin 6,671,995.

Ichikawa et al. discloses that the LEDs can be red, green, and blue and that a total of 7 colors may be achieved (see translation paragraph no. 19) including white (when all LEDs are lit), but does not disclose a white LED. Harkin discloses a lighted fishing lure capable of using multiple LEDs of different characteristics which include single-color LEDs (for example red or green; see col. 1, line 41) and white LEDs (see col. 1, line 42 & col. 9, line 24). It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the white LED of Harkin in the lure of Ichikawa et al. in order to provide the frequency of light which is most appealing to the type of fish sought and which is most visible given the water conditions encountered.

15. Claims 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. No. 2002-199828 to Ichikawa et al. in view of Yokogawa et al. 6,029,388 as applied to claim 26 above, and further in view of Sinclair 6,331,062.

Ichikawa et al. does not particularly disclose at least two lithium batteries, three alkaline batteries, a power source supplying at least 3.4 volts or exceeding 150% of the

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recommended current. Sinclair discloses using 2 cells in series comprising (lithium cells which would result in greater than 3.3V and 150% current [max. continuous current for device is 25mA but it was found that device would continue to operate up to 250mA--- see col. 5, lines 55-end]) to power two LEDs (green or white) and that two cells is optimum since it reduces the effect of series resistance over 3 cells in series. It is also noted that lithium batteries are notoriously old and well known in the light art as providing a high capacity energy source (see cited prior art below in Conclusion section). It would have been obvious to a person of ordinary skill in the art to modify the lighted fishing lure of Ichikawa et al. by utilizing at least two lithium batteries which provide at least 3.4 volts or exceeding 150% of the recommended current in view of Sinclair in order to provide a high capacity energy source that will cause the LEDs to emit far more light than is conventional so that the light may be usefully employed for active illumination.

16. Claims 1-4, 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kulak 4,437,256 in view of Garr 4,727,674.

Kulak discloses a less than neutral buoyant (see col. 2, lines 13-16), underwater transparent (see-through; see col. 1, lines 12-21) fishing lure housing (20) with at least one battery (12) and at least two LEDs (see col. 1, lines 54-60), each LED emitting a different color of light (see col. 1, lines 56-58); a switch system (see Figs. 1, 2 wherein spring 10 urges battery 12 into contact with lead 11; switch not being particularly claimed), but does not disclose wherein one LED emits a blue light and the other emits a green light. Garr discloses a lighted fishing lure capable of using a combination of

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LED colors which include blue, red, green and orange (see col. 3, lines 30-33 & col. 4, lines 56, 57) which are operated with a switch system (circuit boards/control circuits). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the LEDs of Kulak such that they are blue and green in view of Garr in order to provide the frequency of light which is most appealing to the type of fish sought and which is most visible given the water conditions encountered.

In regard to claims 1 and 29, Kulak does not disclose a circuit including a blinker circuit. Garr discloses a blinker circuit (see Example 4). It would have been obvious to a person of ordinary skill in the art to modify the lure of Kulak such that it has a blinking circuit in view of Garr in order to provide blinking lights which may attract the attention of the fish instead of continuous illumination.

17. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kulak 4,437,256 in view of Garr 4,727,674 as applied to claim 1 above, and further in view of or Sinclair 6,331,062.

Kulak discloses two batteries (12 of Kulak), but does not disclose two lithium batteries. Sinclair discloses using 2 cells in series comprising (lithium cells which would result in greater than 3.3V and 150% current [max. continuous current for device is 25mA but it was found that device would continue to operate up to 250mA---see col. 5, lines 55-end]) to power two LEDs (green or white) and that two cells is optimum since it reduces the effect of series resistance over 3 cells in series. It is also noted that lithium batteries are notoriously old and well known in the light art as providing a high capacity energy source (see cited prior art below in Conclusion section). It would have been

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obvious to a person of ordinary skill in the art to modify the lighted fish lure of Kulak by utilizing two lithium batteries in view of Sinclair in order to provide a high capacity energy source that will cause the LEDs to emit far more light than is conventional so that the light may be usefully employed for active illumination.

18. Claims 1-4, 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kulak 4,437,256 in view of Harkin 6,671,995.

Kulak does not disclose wherein one LED emits a green light and the other emits a white light or a blinking circuit. Harkin discloses a lighted fishing lure capable of using multiple LEDs of different characteristics which include single-color LEDs (for example red or green; see col. 1, line 41) and white LEDs (see col. 1, line 42 & col. 9, line 24) and that the lights may be operated randomly (see col. 9, lines 29-34). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the LEDs of Kulak such that they are green and white and in random fashion in view of Harkin in order to provide both the frequency of light which is most appealing to the type of fish sought and which is most visible given the water conditions encountered and blinking lights which may attract the attention of the fish instead of continuous illumination.

19. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kulak 4,437,256 in view of Harkin 6,671,995 as applied to claim 1 above, and further in view of or Sinclair 6,331,062.

Kulak discloses two batteries (12 of Kulak), but does not disclose two lithium batteries. Sinclair discloses using 2 cells in series comprising (lithium cells which would

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result in greater than 3.3V and 150% current [max. continuous current for device is 25mA but it was found that device would continue to operate up to 250mA---see col. 5, lines 55-end]) to power two LEDs (green or white) and that two cells is optimum since it reduces the effect of series resistance over 3 cells in series. It is also noted that lithium batteries are notoriously old and well known in the light art as providing a high capacity energy source (see cited prior art below in Conclusion section). It would have been obvious to a person of ordinary skill in the art to modify the lighted fish lure of Kulak by utilizing two lithium batteries in view of Sinclair in order to provide a high capacity energy source that will cause the LEDs to emit far more light than is conventional so that the light may be usefully employed for active illumination.

20. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kulak 4,437,256 in view of Sinclair 6,331,062 as applied to claim 34 above, and further in view of Harkin 6,671,995 or Garr 4,727,674.

Kulak does not disclose wherein one LED emits a green light and the other emits a blue or white light. Harkin discloses a lighted fishing lure capable of using multiple LEDs of different characteristics which include single-color LEDs (for example red or green; see col. 1, line 41) and white LEDs (see col. 1, line 42 & col. 9, line 24). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the LEDs of Kulak such that they are a combination of colors including green and white in view of Harkin in order to provide the frequency of light which is most appealing to the type of fish sought and which is most visible given the water conditions encountered.

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Kulak and Harking do not disclose blue LEDs. Garr discloses a lighted fishing lure capable of using a combination of LED colors which include blue, red, green and orange (see col. 3, lines 30-33 & col. 4, lines 56, 57) which are operated with a switch system (circuit boards/control circuits). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the LEDs of Kulak and Harkin such that one of the LEDs includes the colors of blue or green in view of Garr in order to provide the frequency of light which is most appealing to the type of fish sought and which is most visible given the water conditions encountered.

21. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patrick et al. 6,203,170 in view of World 5,190,366.

Patrick et al. discloses a switch (68, 70, 74) including a blinking circuit (col. 5, lines 36-53), but does not disclose the use of at least two LEDs, one which emits blue light and the other which emits white light. World discloses a device which utilizes a connector body (10, 310) to enable a single attachment of a plurality of different colored light tubes which emit light in the visible spectrum (350-800 millimicrons) which include blue and green. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the LEDs of Patrick et al. such that one is blue and the other is green in view of World in order to provide a plurality of colors where each may be more effective than others at certain times.

22. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patrick et al. 6,203,170 in view of World 5,190,366 as applied to claim 1 above, and further in view of Sinclair 6,331,062.

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Patrick et al. discloses a battery pack (60) comprising nickel cadmium, but do not disclose two lithium batteries. Sinclair discloses using 2 cells in series comprising (lithium cells which would result in greater than 3.3V and 150% current [max. continuous current for device is 25mA but it was found that device would continue to operate up to 250mA---see col. 5, lines 55-end]) to power two LEDs (green or white) and that two cells is optimum since it reduces the effect of series resistance over 3 cells in series. It is also noted that lithium batteries are notoriously old and well known in the light art as providing a high capacity energy source (see cited prior art below in Conclusion section). It would have been obvious to a person of ordinary skill in the art to modify the lighted fish lure of Patrick et al. by utilizing two lithium batteries in view of Sinclair in order to provide a high capacity energy source that will cause the LEDs to emit far more light than is conventional so that the light may be usefully employed for active illumination and also to allow the user to utilize two batteries instead of four so that the task of changing batteries is made simpler.

23. Claims 2, 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patrick et al. 6,203,170 in view of World 5,190,366 and Herrlich 4,879,831.

Patrick et al. does not disclose the use of at least two LEDs, one which emits blue light and the other which emits white light. World discloses a device which utilizes a connector body (10, 310) to enable a single attachment of a plurality of different colored light tubes which emit light in the visible spectrum (350-800 millimicrons) which include blue and green. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the LEDs of Patrick et al. such that one

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is blue and the other is green in view of World in order to provide a plurality of colors where each may be more effective than others at certain times.

Patrick et al. and World do not disclose the use of a white light. Herrlich discloses light tubes (26) that come in colors such as green, blue, red, and white. It would have been obvious to a person of ordinary skill in the art to utilize the white light of Herrlich in the lure of Patrick et al. and World in order to provide another choice of color to the user which will optimize fishing.

24. Claims 19-22, 24, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patrick et al. 6,203,170 in view of World 5,190,366 or Herrlich 4,879,831 and Sinclair 6,331,062.

Patrick et al. does not disclose the use of at least two LEDs, each emitting a different color or one which emits blue light and the other which emits white light. World discloses a device which utilizes a connector body (10, 310) to enable a single attachment of a plurality of different colored light tubes which emit light in the visible spectrum (350-800 millimicrons) which include blue and green. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the LEDs of Patrick et al. such that one is blue and the other is green in view of World in order to provide a plurality of colors where each may be more effective than others at certain times.

Patrick et al. and World do not disclose the use of a white light. Herrlich discloses light tubes (26) that come in colors such as green, blue, red, and white. It would have been obvious to a person of ordinary skill in the art to utilize the white light

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of Herrlich in the lure of Patrick et al. and World in order to provide another choice of color to the user which will optimize fishing.

Patrick et al. discloses a battery pack (60) comprising nickel cadmium, but does not disclose two lithium batteries. Sinclair discloses using 2 cells in series comprising (lithium cells which would result in greater than 3.3V and 150% current [max. continuous current for device is 25mA but it was found that device would continue to operate up to 250mA---see col. 5, lines 55-end]) to power two LEDs (green or white) and that two cells is optimum since it reduces the effect of series resistance over 3 cells in series. It is also noted that lithium batteries are notoriously old and well known in the light art as providing a high capacity energy source (see cited prior art below in Conclusion section). It would have been obvious to a person of ordinary skill in the art to modify the lighted fish lure of Patrick et al. by utilizing two lithium batteries in view of Sinclair in order to provide a high capacity energy source that will cause the LEDs to emit far more light than is conventional so that the light may be usefully employed for active illumination.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gordon 5,983,553 discloses fins (23, 25) affected by underwater current flows.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA